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Base Reuse Process Overview

To achieve the optimum reuse potential of every closing or realigning base, it is essential that both Military Department implementors and the LRA understand the basic elements of the entire process. Each action taken in the process should be conducted with the whole process in mind. The purpose of this Chapter is to describe the framework for the base reuse process and the general context for the rest of the information in this Manual.

The base reuse process is affected by a myriad of Federal real property and environmental laws and regulations, along with volumes of implementing guidance. Some of these laws (e.g., the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (BCRA 88) and the Defense Base Closure and Realignment Act of 1990 (DBCRA 90)) were specifically enacted to govern certain parts of this process. The remainder, however, were enacted to address more routine Government property transactions or specific problems such as environmental cleanup. Collectively, they have a great effect on the process (see Appendix A for further information on many of these laws and regulations).

Bases are selected for realignment or closure according to a process prescribed in the BCRA 88 and the DBCRA 90. Once a base has been approved for closure or realignment, laws and regulations identify the requirements that (see Appendices A–C and E) shape the rest of the process to be followed—the beginning of base reuse implementation. The general timeline for events associated with BRAC 95 reuse implementation is shown in Figure 2-1. Some of the milestones shown in Figure 2-1 may be extended by mutual agreement between the Military Department and the LRA.

Although Figure 2-1 depicts a seemingly linear and sequential series of events, the base reuse process is best viewed as a series of concurrently conducted activities that can be subdivided into three principal phases: **base-wide reuse planning, disposal decision making, and parcel-by-parcel decision implementation.** Figure 2-2 shows how the three phases and various principal base reuse activities relate to one another.

When does the base reuse process begin?

What's the best way to look at the process?

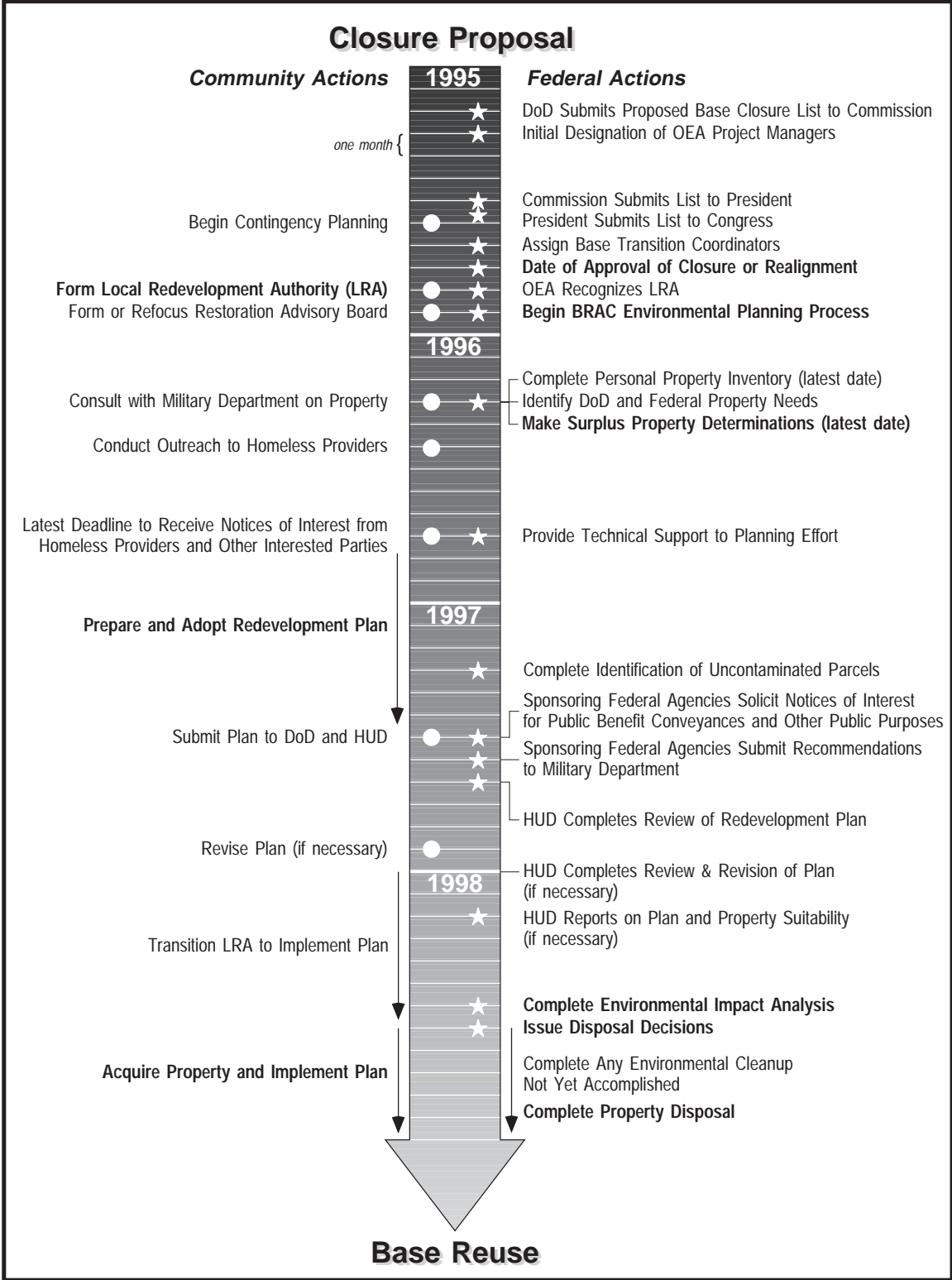


Figure 2-1. Illustrative timeline for selected reuse implementation activities at BRAC 95 bases

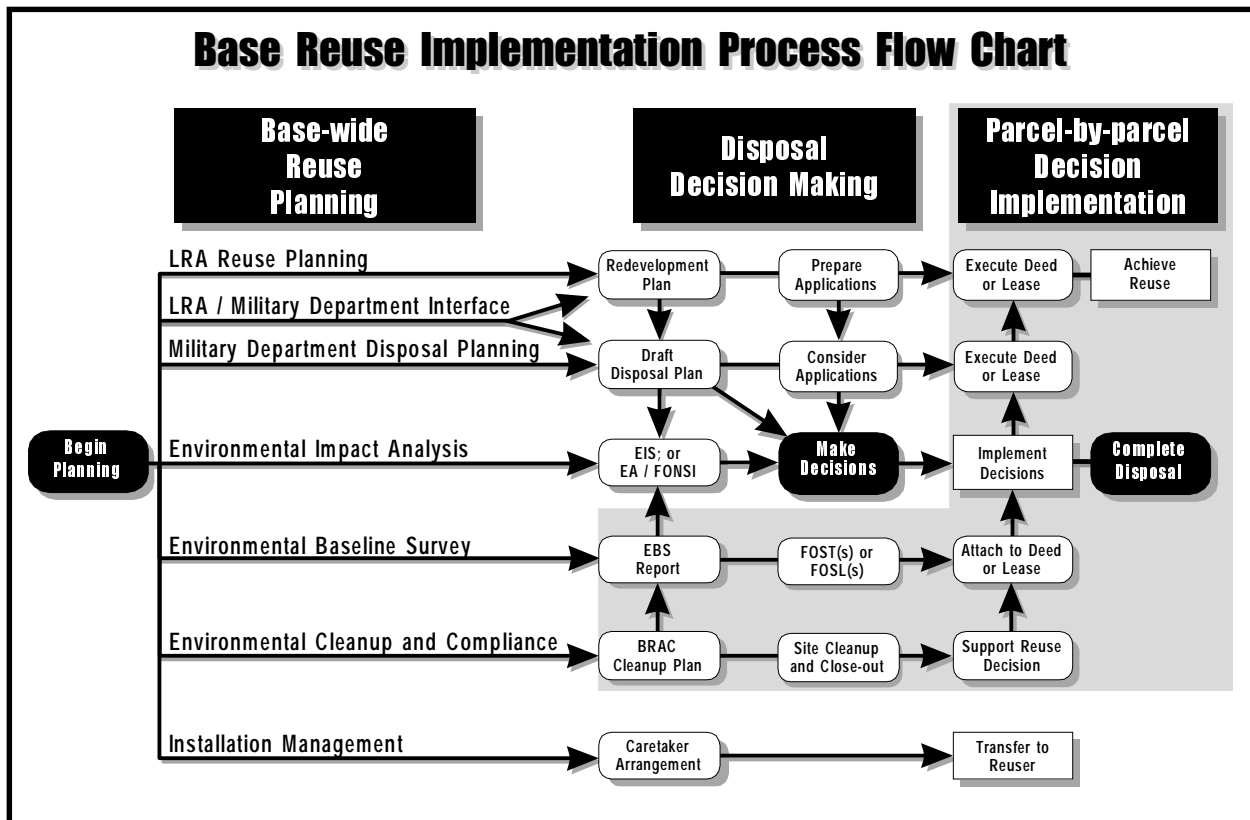


Figure 2-2. Phases of Base Reuse Implementation

Implementation of the overall base reuse process (including the actual closure and the base's conversion from military to civilian uses) can be an enormously complex undertaking, involving literally hundreds or thousands of individuals, collectively devoting many hours of hard work.

Phase One: The first phase, **base-wide reuse planning** (further described in Section 2.1), consists of the many activities that occur while the LRA prepares its redevelopment plan and before the Military Department, in its role as the Federal property disposal agent, makes decisions on how the base will be conveyed to end users. These activities include the LRA's redevelopment planning process and the Military Department's required environmental impact analysis activities, natural and cultural resources determinations and consultations, identification of uncontaminated property, and many environmental cleanup- and compliance-related activities.

Phase Two: The second phase includes activities associated with the Military Department's **disposal decision making** (further described in Section 2.2). This phase may include the issuance of one or more Disposal Record(s) of Decision (RODs), or similar decision documents. It also includes the approval of applications submitted by the LRA or others for property under various public

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purpose conveyance authorities (e.g., public airport, economic development, and other public purpose conveyances).

Phase Three: After final disposal decisions have been issued by the Military Department, the last phase, **parcel-by-parcel decision implementation** (further described in Section 2.3), occurs for each disposal parcel. This phase lasts until the property has been conveyed and includes completion of environmental activities that must be performed.

**Who gets involved
in the base reuse
process?**

**Who can I get in
touch with to get
more help?**

For this complex undertaking to be successfully implemented, teamwork is critical. Individuals from the Military Department, the on-site Base Transition Coordinator, the DoD Office of Economic Adjustment (OEA) Project Manager, the LRA, local and State government, and other Federal, State and local reuse planning and implementation organizations will all play key roles.

Many of the organizations that will be involved in the process at a closing or realigning installation are not explicitly identified in this Manual. However, Federal points of contact to assist with base reuse implementation are identified in Appendix G. Also, a comprehensive list of available organizations, including individuals to contact, can be found in the Appendix of the *Community Guide to Base Reuse*, published by OEA. The Guide may be obtained by contacting OEA (See page G-1 for address) or by visiting OEA's home page at <http://emissary.acq.osd.mil/bctoweb/oea/oeahome.nsf>. The Guide also provides information intended for local officials, LRAs, and the general public, including practical advice on organizing an LRA and developing and implementing a redevelopment plan.

2.1 PHASE ONE: BASE-WIDE REUSE PLANNING

Reuse planning requires the concurrent execution of numerous activities, most of which are required by law. Generally, this phase begins at the approval date for the closure or realignment of the installation (see Figure 2-1) and ends when the LRA's redevelopment plan has been prepared and submitted to the Military Department, which must then complete any required environmental impact analyses and analyze any other information needed to make final disposal decisions. OEA has grant moneys available to assist LRAs with reuse planning.

To be successful, reuse planning efforts must be well organized and well coordinated. For example, the **LRA** will generally accomplish the following activities during reuse planning:

- Form, be recognized by the Department of Defense, and receive economic adjustment planning assistance.
- Solicit, identify, and consider various interests in installation property.
- Conduct outreach activities that focus on community needs, including homeless assistance needs.
- If useful, request interim leases of available installation facilities.
- Identify its own interests in available personal property.

- Develop a comprehensive land-use plan.
- Consider the environmental condition of the property (especially areas with ordnance and explosives), on-going, and planned environmental remediation activities into account when developing the redevelopment plan.
- Conduct market research and marketing activities to attract prospective property users.
- Prepare a comprehensive redevelopment plan and other essential reuse-related planning documents.

Concurrently, and in coordination with the LRA's activities described above, the **Military Department** will complete these tasks:

- Identify installation property, which is excess to DoD's needs and surplus to the Federal Government's needs, that will be made available for reuse.
- Inventory personal property and consult with the LRA to identify the personal property that will be made available to the LRA for reuse.
- Provide the LRA with existing facility and environmental data, as appropriate, to assist the LRA with developing a redevelopment plan.
- Conduct National Environmental Policy Act (NEPA) analysis to determine environmental impacts that may occur on the property as a result of the disposal actions.
- Identify potentially impacted natural or cultural resources on the property and any mitigation measures that may have to be taken.
- Conduct an environmental baseline survey to identify the environmental condition of installation property, including property that is uncontaminated and can be made available for reuse without further environmental actions (i.e., Community Environmental Response Facilitation Act (CERFA) report).
- Provide the LRA with copies of applicable environmental analyses, including Environmental Baseline Surveys and natural and cultural resource studies, as they become available, to assist the LRA with developing a redevelopment plan.
- Refocus current environmental cleanup, compliance, and natural and cultural resources strategies and schedules in light of the LRA's land-use plan and redevelopment priorities.
- Relocate active mission elements (mission drawdown).
- Plan for and carry out protection and maintenance (caretaking) of installation property and facilities not immediately reused at the time of active mission departure/base closure.

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As shown in Figure 2-2, reuse planning activities should be concurrently conducted to the extent possible, so the Military Department can have the information it needs to make property transfer and environmental cleanup decisions. Reuse planning activities can be grouped into four principal categories:

- *Comprehensive land-use and redevelopment planning*, including LRA formation, recognition, and reuse planning activities, Military Department/LRA community interface activities, and Military Department disposal planning activities (including interim leasing of facilities no longer needed by the active mission), conducted to assist LRA reuse planning efforts (see also Section 2.1.1).
- *Environmental impact and other impact analysis* (see also Section 2.1.2).
- *The BRAC Environmental Process*, including environmental baseline surveys and environmental cleanup activities (which includes mission/operational- and closure-related compliance activities) (see also Section 2.1.3).
- *Installation management*, including active mission drawdown, protection and maintenance of facilities, and caretaker operations (see also Section 2.1.4).

2.1.1 Comprehensive land-use and redevelopment planning

Both DBCRA 90 and the Redevelopment Act identify specific reuse planning phase requirements and timelines (see Appendix B of this Manual for the full text of these statutes and Figure 2-1, which depicts significant milestones). Many of these requirements and timelines relate to LRAs soliciting interest in the installation, conducting homeless assistance outreach activities, identifying personal property needs, considering expressions of interest in property, consulting with the Military Department while it determines initial maintenance levels for installation facilities, and preparing and submitting the redevelopment plan. The timely submission of both a redevelopment plan and any necessary property applications will facilitate the Military Department's ability to make final property disposal and environmental cleanup decisions that will best meet community reuse goals. The *Community Guide to Base Reuse* contains essential information on LRA formation, organization, and recognition, reuse planning strategies, and strategies for creating a viable redevelopment plan. This Manual provides guidance for many of the real and personal property-related activities.

2.1.2 Environmental impact and other impact analyses

As part of the reuse planning phase, the Military Department, under NEPA, must consider all reasonable disposal alternatives and their respective environmental consequences. This is accomplished by means of a formal environmental impact analysis, which takes the form of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) depending on the level of analysis required. The Military Department is required to analyze impacts to natural and cultural resources (e.g., historic structures, wetlands, threatened and endangered species, Native American sites and others), and may be required to consult with other Federal and State agencies before making final property disposal decisions.

**What affect does the
National
Environmental
Policy Act (NEPA)
have on the
planning process?**

REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The NEPA process is intended to help the Military Department make informed and environmentally responsible disposal decisions. The NEPA process requires the Military Department to conduct environmental analysis concerning:

- The environmental impact of the proposed disposal action, including reasonably anticipated reuse activities.
- Alternatives to the proposed disposal and reuse action, including the “no-action” alternative.
- Adverse impacts.
- Any appropriate environmental impact mitigation actions.

For disposal of closing or realigning installations, the NEPA process (described in 40 CFR Parts 1500–1508) is typically completed in one of three ways:

- **Categorical Exclusion.** If applicable, a categorical exclusion may be used by the Military Department when a parcel is to be transferred to another Military Department or Federal Agency.

A categorical exclusion may also be used by the Military Department for interim leases where there is no substantial change in land use.

- **Environmental Assessment (EA)/Finding of No Significant Impact (FONSI).** The EA provides the Military Department with sufficient evidence and analysis for determining whether a FONSI or an EIS should be prepared. A FONSI is a determination that, based on the EA, the disposal action will not significantly affect the environment and a full EIS is not necessary. The Military Department may receive public comments on the EA and the applicability of a FONSI. After a FONSI, the Military Department can issue a formal disposal decision for the property.
- **EIS/Disposal Record of Decision (ROD).** Preparation of an EIS involves a more formal public involvement process, which can be summarized as follows:
 - The Military Department publishes a Notice of Intent in the *Federal Register* that a property disposal action may be undertaken and that an EIS will be prepared and considered.
 - A public scoping meeting will be held in the geographical area to obtain public comments about the possible environmental impacts of the proposed disposal action and likely reuses, as well as the reasonable alternatives that should be considered in the analysis. It is therefore important for the LRA and other interested community leaders to participate in the scoping meeting.

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- Data are collected and analyzed by experts in different fields, and the results are published in a Draft EIS (DEIS). The DEIS will be made available for public review and comment. Interested agencies, organizations, and individuals normally have 45 days to review and comment. Also during this time, a public hearing is held in the community to explain DEIS findings and to receive oral comments.
- The Final EIS (FEIS) is completed no later than 12 months after the submittal of the LRA's redevelopment plan. The FEIS will address public and other comments received on the DEIS. A Notice of Availability (NOA) of the FEIS will be published in the *Federal Register*.

At least 30 days after publication of the FEIS, a disposal ROD is issued. The disposal ROD indicates the disposal actions that have been selected, the alternatives considered, the potential environmental impacts of each alternative, and any specific mitigation activity to support the decision. After the ROD is signed and issued, the availability of the disposal ROD is announced in the *Federal Register*. Then, the Military Department may dispose of the property.

What is DoD's policy on NEPA? ||

It is DoD policy (*DoD Guidance on Accelerating the NEPA Process for Base Disposal Decisions*, Deputy Secretary of Defense Memorandum "Fast Track Cleanup at Closing Installations," May 1996—see Appendix F) that the LRA's redevelopment plan, if available and to the extent legally permissible, will be a primary factor in the development of the proposed action, reasonable alternatives, and effects analysis in the Military Department's NEPA process for the disposal action. If the elements of the redevelopment plan do not constitute a reasonable alternative for disposal and reuse of the base, the Military Department will identify the problematic elements of the plan and work with the LRA to devise mutually acceptable plan modifications. Designation of the LRA's redevelopment plan as the proposed action does not affect the Military Department's obligation under NEPA to consider reasonable alternatives for the disposal and reuse of installation property. In the event that the LRA does not reach a consensus or fails to prepare an acceptable or timely redevelopment plan, the Military Department will prepare the NEPA analysis using reasonable assumptions as to the likely reuse scenarios and their reasonable alternatives.

Section 2911 of Title XXIX and DoD policy (as referenced above and found in Appendix F) require that any required NEPA analysis be completed no later than 12 months after the LRA submits its adopted redevelopment plan. In conducting the NEPA analysis the Military Departments consider, where applicable, any available similar State analysis.

State agencies can participate in the NEPA process as cooperating agencies. Accordingly, when an LRA is acting as a legal entity of the State, and recognized by OEA as such, it should be considered by the Military Department for cooperating agency status as long as there are no other issues unique to the installation that would preclude such status. The decision to make such a determination should be made after a careful review of the factors surrounding the closure or realignment, as well as consideration of the liabilities associated with the designation. However, the responsibility for the NEPA analysis and resulting ROD rests with DoD.

A similar NEPA analysis process will apply when property is reused under an interim lease (see Chapter 5). Normally, a categorical exclusion or an EA/FONSI is sufficient to support a lease action.

2.1.3 The BRAC Environmental Process

Many environmental issues must be addressed to prepare an installation for closure and transfer. These issues may be generally referred to as environmental restoration, compliance, and conservation (natural and cultural resources). The environmental process is emphasized and expedited at closure bases to facilitate rapid transfer for community reuse. Many environmental activities will occur during the reuse planning phase and some activities may continue through implementation.

*How are other
environmental
issues addressed?*

Environmental decisions are based on how the land is to be reused. Therefore, it is very important for the Military Department to be aware of the LRA's reuse concepts as soon as they are formulated so that cleanup actions, in particular, may be conducted in a manner that is consistent, to the extent practicable, with reuse plans. It is also important for the Military Department to communicate environmental issues to the LRA early in the process, to ensure reuse planning is compatible with the more significant environmental conditions that may limit certain types of land use. This way, environmental priorities can be reconciled with community reuse priorities, and appropriate cleanup levels can be established to reflect anticipated future land uses. Further guidance on future land use considerations in environmental cleanup is contained in the *DoD Policy on Responsibility for Additional Cleanup After Transfer of Real Property*. A copy of this policy can be found at Appendix F.

BRAC ENVIRONMENTAL RESTORATION PROGRAM

Environmental cleanup programs have been ongoing for many years as part of the Department of Defense Environmental Restoration Program. The BRAC environmental restoration program consists of five principal steps as outlined in the DoD BRAC Cleanup Plan Guidebook, Fall 1995. The steps are as follows:

- A **BRAC Cleanup Team (BCT)** is established for each base where property will be made available to the local community for reuse. The BCT will include a BRAC Environmental Coordinator (or BEC—a Military Department employee), and representatives appointed by the State environmental agency and the U.S. Environmental Protection Agency's (EPA's) regional office. The BCT members act with the authority of the State, EPA regulatory offices, and the Military Department. A Project Support Team (PST), made up of specialists and technical experts, assists the BCT in developing the comprehensive BRAC Cleanup Plan. The LRA is a valuable participant in the BRAC environmental restoration program and should provide input in support of the development, update, and implementation of the cleanup program. The LRA is encouraged to participate in the environmental program as a member of the PST. In addition, the BCT should work closely with the LRA, particularly the environmental subcommittee. The LRA should receive cleanup information from the BCT and should, in turn, provide the BCT with input on reuse priorities and decisions. The Base Transition Coordinator (BTC) helps facilitate communication and coordination between the BCT and the LRA. The BTC is responsible for informing both the BCT and

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the LRA of new information, as it becomes available, regarding reuse planning and the environmental cleanup program for the installation.

- The BCT reviews the status of all base environmental programs (including cleanup, compliance, and natural and cultural resources programs), as well as the LRA's redevelopment plan. If the LRA's redevelopment plan is not available, the LRA should provide the BCT general land use information to assist them in selecting any necessary cleanup standards.
- The BCT considers the land use concepts in identifying action items requiring further effort, and develops a strategy that incorporates both reuse priorities and environmental cleanup as required by Federal and State environmental laws.
- A BRAC Cleanup Plan (BCP) is prepared, describing the status of base environmental programs, and identifying strategies and schedules for integrating the required environmental cleanup with the community reuse plan.
- As contamination is remediated, the BCP is updated to reflect cleanup and site close-out actions that have been taken, as well as any changes in community redevelopment needs.

Most property can be put into productive reuse by either lease or deed, while the Military Department and the BCT work to ensure that cleanup is conducted in accordance with Federal and State laws.

RESTORATION ADVISORY BOARDS (RABs)

*What is the
Restoration
Advisory Board ?*

All DoD installations being closed or realigned will establish a RAB, if property will be available for transfer. RABs are co-chaired by community and installation representatives and serve as a forum for information exchange and partnership among citizens, the installation, EPA, and the State on environmental restoration issues.

RABs offer an opportunity for communities to have a voice in the cleanup process by bringing together people who reflect the diverse interests within the local community. Community members on RABs can actively participate in a timely and thorough manner. This participation includes reviewing restoration documents and providing advice as individuals to the decision-makers from the Military Department and the regulatory agencies on restoration issues. The LRA is encouraged to participate in the RAB to keep both the RAB and the BCT informed about reuse issues.

While RABs are not intended to replace other community involvement activities, the RAB should act as a focal point for the exchange of information between an installation and the local community regarding environmental restoration activities. Members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Through the RAB, community input on environmental investigation, cleanup, and priorities can be raised directly to DoD, EPA and State regulatory representatives. Further guidelines for establishing and operating RABs can be found at Appendix F in

the *Restoration Advisory Board Implementation Guidelines, September 1994*, jointly issued by DoD and EPA.

ENVIRONMENTAL SUITABILITY FOR TRANSFER OR LEASE

To facilitate reuse planning efforts, the Military Department, under the Community Environmental Response Facilitation Act (CERFA), will identify “uncontaminated” base property no later than 18 months after the date of approval for closure or realignment. This identification procedure includes consultation with appropriate State or EPA regulators. In addition, no property can be conveyed by deed or leased until the Military Department makes a Finding of Suitability to Transfer (FOST) or a Finding of Suitability to Lease (FOSL), respectively.

The FOST/FOSL process is intended to determine whether property is environmentally suitable for its intended use and whether there should be any restricted use of the property. An Environmental Baseline Survey (EBS), which is similar to the environmental site assessments commonly used in commercial real estate transactions, is used to support the FOST/FOSL. An EBS includes the identification and analysis of all available and relevant records, a visual and physical inspection of the base and adjacent property, a recorded chain-of-title documents review, interviews with past and current base employees and local officials, and other activities.

Military Department implementors, in consultation with the LRA, should provide input to the BCT well in advance on properties to be reused so that a FOST/FOSL can be developed, and so that the BCT can ensure that there are no environmental impediments to the intended reuse. Further guidance on the EBS/FOSL/FOST/CERFA processes can be found in the DoD guidance documents included in Appendix F.

Appendix A of this Manual identifies and summarizes pertinent environmental laws and regulations that affect base reuse implementation. Further information on the BRAC environmental process can be found in *DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams* (May 1996), which can be found in Appendix F of this Manual.

2.1.4 Installation management

As an installation goes through the process of closure or realignment, duties assigned to active units, including operation of utilities and maintenance of buildings, roads and other facilities, must eventually be assumed by others. Representatives of the Military Department, in consultation with the LRA, will identify an initial level of maintenance that facilities will require to support reuse after the active mission departs (see Chapter 6 of the Manual for further information on how initial maintenance levels are determined).

Another aspect of Military Department/LRA consultation is that of establishing procedures and responsibilities for providing common services, including fire protection, security, telephones, roads, and snow/ice removal. How these common services will be provided after the base closes should be discussed and resolved in the earliest stages of consultation. Once closure occurs, the Military Departments will sustain an appropriate level of maintenance to support reuse

What is CERFA?

What are FOSTs and FOSLs?

What's an EBS?

Where can I find more guidance on FOSTs/FOSLs, EBSs, and CERFA?

for a set period of time (see Chapter 6). Such protection and maintenance at a closed military base is provided through contracts, agreements with local communities, or other caretaker arrangements. Maintenance by the Military Department will end when the property is leased or disposed of, or at the expiration of the set maintenance period. Once property is leased or disposed of, its maintenance becomes the responsibility of the Lessee or property recipient.

2.2 PHASE TWO: DISPOSAL DECISION MAKING

*How and when are
final property
disposal decisions
made?*

The second major phase of the base reuse process, disposal decision making, includes the activities associated with the Military Department's disposal decisions and the LRA's reuse decisions. After reuse planning activities are completed, the LRA will submit its adopted redevelopment plan to DoD and as part of an application made to the Secretary of Housing and Urban Development (HUD), in accordance with the Redevelopment Act. HUD will review and approve the LRA's application.

After completing its NEPA analysis and associated documentation, the Military Department will issue final disposal decisions. This is generally accomplished by issuing a disposal decision document as a public statement of the disposal decisions. The decision document (ROD or FONSI) describes the disposal decisions that the Military Department has made, as well as potential mitigation that may be required if certain activities occur. In certain circumstances, supplements to the initial disposal decision may also be issued.

This phase also includes the Military Department's decisions on requests for specific property conveyances (briefly described in Section 2.3) to approved applicants. Applications (see Chapter 3 and Appendix E of this Manual for additional information on public benefit conveyance applications) are required for most discounted conveyances of property for public benefit conveyances. For example, the Department of Education must review and approve an application prior to the Military Department's implementation of an education public benefit conveyance. EDCs also require an application. Title XXIX and the final rule (32 CFR Part 175; see Appendices B and C of this Manual for the complete text of each, and Chapter 7 for further Military Department guidance) identify the requirements for LRAs who want to apply for EDCs and the criteria the Military Departments should use in evaluating EDC applications.

The Military Department always retains ultimate authority to make property disposal decisions and will resolve any conflicting property interests at the time the final disposal decisions are issued.

2.3 PHASE THREE: PARCEL-BY-PARCEL DECISION IMPLEMENTATION

After necessary applications have been submitted, reviewed, and accepted, and after final disposal decisions are issued by the Military Department, the reuse process enters the decision implementation phase. This phase includes Military Department conveyance of installation property (or property "disposal"). In this phase, the Military Department will proceed to dispose of property in accordance with its documented disposal decisions, using conveyance authorities established by the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471 *et seq.*), the Surplus Property Act of 1944 (49 U.S.C. §§ 47151-47153), the Act of May 19, 1948 (16 U.S.C. § 667b), Title XXIX, the Redevelopment Act, and other

authorizing statutes, as implemented in the Federal Property Management Regulations (41 CFR Part 101-47), 32 CFR Parts 175 and 176, and elsewhere.

The Military Departments can assign property *to another Federal Agency* before the completion of remedial actions required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and before the issuance of a NEPA disposal ROD. However, CERCLA requires the Military Departments to complete environmental cleanup before transferring the property by deed to non-Federal entities. This allows the Military Departments to write covenants in the deed that guarantee that the quality of the environmental cleanup is fully protective of human health and the environment. In certain circumstances, a deed transfer may be made before all remedial actions have been fulfilled using the new “Early Transfer Authority” which is described in more detail in Chapter 5 and in a memorandum contained in Appendix F. In addition, for property with ongoing cleanup efforts, leases may be used to achieve prompt reuse.

Base property will be conveyed (usually by one or more parcels), as soon as possible, by deed for civilian reuse. One of nine property conveyance methods can be used:

- **Federal Agency transfers** of excess base property to non-DoD organizations within the Federal Government. These transfers require reimbursement to the Military Department of the full fair market value of the property, unless:
 - The Secretary of the Military Department and the Office of Management and Budget grant a waiver; or
 - A law specifically exempts the transfer from reimbursement.
- **Public purpose conveyances** for such public uses as airports, education, health, historic monuments, ports, parks and recreation, and wildlife conservation. Generally, a Federal Agency with specific expertise in a conveyance category (e.g., the National Park Service for park land and recreation conveyances) is authorized to serve as a sponsoring or approving Agency. Approved recipients may receive these conveyances at a substantial discount (up to 100 percent of fair market value), following DoD consultation with the appropriate Agency.
- **Homeless assistance conveyances** (under the Redevelopment Act) at no cost, either to the LRA or directly to the representatives of the homeless. Any deeds prepared by the Military Department for conveyance of property directly to representatives of the homeless should provide for transfer of the property to the LRA if no longer required for homeless needs. Personal property may be conveyed to the local redevelopment authority for use by the homeless assistance provider. The LRA will be responsible for monitoring implementation of the homeless assistance provisions of its redevelopment plan.

What methods can be used to convey property at BRAC installations?

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- **Negotiated sales** to public bodies or other qualified entities require payment of not less than the fair market value, although payment terms are negotiable. Terms of negotiated sales are subject to review by Congress.
- **Advertised public sales** may be made to the party that submits the highest bid, provided it is not less than the fair market value. Sales to private parties for amounts over \$3 million are subject to Attorney General review.
- **EDCs** to an LRA, for creating jobs and economic revitalization of the community, are approved by the Military Department. Under an EDC, property may be sold at or below the estimated present fair market value with flexible payment terms and conditions. EDCs are discussed in detail in Chapter 7.
- **Conveyances for the cost of environmental remediation** may be made to those parties who enter into an agreement to pay the costs of environmental remediation on the property, provided that the total cost to the recipient is no less than the property's fair market value. Implementing regulations for this conveyance authority, required by Section 2908 of Title XXIX, have been promulgated as a proposed rule. By law, this authority expires on November 30, 1998.
- **Depository institution facilities** may be conveyed to the operating depository institution, by sale at fair market value, when the institution constructed or substantially improved the facilities.
- **Leaseback conveyances** to allow LRA ownership of property while ensuring that Federal real property needs are met. Under a leaseback, property that is still needed by another Federal Department or Agency is conveyed to the LRA with the condition that the LRA lease it back to the Federal entity. The lease cannot require rental payments. Leasebacks are discussed in more detail in Chapter 8.

2.3.1 Asbestos containing materials

Some buildings and facilities on BRAC property may contain asbestos containing materials (ACM). Some common examples of ACM are spray acoustic ceilings, acoustic tiles, various plasters, duct wrap, non-bituminous roofing felt, wallboard, and thermal insulation on pipes and boilers. Friable ACM may pose a threat to human health and is regulated. Non-friable ACM is typically bound up with cement, vinyl, asphalt, or some other type of hardening binder and consequently does not pose a threat to human health and is not regulated. Some examples of non-friable asbestos building products are transite (cement) siding, vinyl asbestos floor tiles, and asphalt roofing shingles.

In accordance with DoD policy, ACM that poses a threat to human health at the time of transfer shall be remediated by the Military Department, or by the transferee under a negotiated requirement of the contract for sale or lease. Consistent with this policy, ACM that poses a threat to human health may be left in-place and the property transferred "as is" only when the hazardous ACM will be otherwise addressed through demolition, renovation, repairs or other arrangements made between the Military Department and the new owner. See

Appendix F for the DoD policy on ACM and additional information regarding this matter.

2.3.2 Institutional controls

Institutional controls are a commonly used tool in property transactions.

Institutional controls are structural or legal mechanisms used to limit access to, or restrict the use of, property. A familiar example of an institutional control would be a deed restriction prohibiting television satellite dishes in planned communities. For BRAC property transfers, institutional controls may be imposed by the Military Department or other governmental entities. Institutional controls are commonly used to protect historic buildings, wetlands, floodplains, and/or endangered species. They may also be used to protect the general public from exposure to possible residual contamination. LRAs and other future land users should be aware that under some circumstances, institutional controls may be a necessary element of the transfer of closing base property.

In general, institutional controls fall into two categories: proprietary controls and governmental controls.

- Proprietary controls are private contractual mechanisms contained in the deed or other transfer documents. Proprietary controls involve the placement of restrictions on land use by means of easements, covenants, and reversionary interests.
- Governmental controls are restrictions that are within the traditional police powers of State and local governments to impose and enforce. Examples of governmental controls include permit programs and planning and zoning limits on land use.

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